

House File 578 - Introduced

HOUSE FILE _____
BY WHITAKER

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of Iowa packers and the
2 purchase of swine from Iowa producers, providing for civil and
3 state enforcement, and providing civil penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2580HH 82
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1 1 Section 1. NEW SECTION. 202D.1 PURPOSE.
1 2 The purpose of this chapter is to increase competition and
1 3 transparency among packers that purchase in=state=produced
1 4 swine from producers in this state.
1 5 Sec. 2. NEW SECTION. 202D.2 DEFINITIONS.
1 6 1. "Base price" means the price paid for in=state=produced
1 7 swine, delivered to a packer, before application of any
1 8 premiums or discounts, and expressed in dollars per hundred
1 9 pounds of hot carcass weight as calculated in the same manner
1 10 as provided in 7 C.F.R. } 59.30.
1 11 2. "Business association" means the same as defined in
1 12 section 202B.102.
1 13 3. "Controlling interest" means actual control of a
1 14 business or the exercise of material participation, directly
1 15 or indirectly, in the management and policies of a business,
1 16 whether through the ownership of voting securities, by
1 17 contract, or otherwise.
1 18 4. "Covered packer" means a packer that has a controlling
1 19 interest in a processing plant that slaughters at least one
1 20 thousand swine per business day and that is located in this
1 21 state.
1 22 5. "Custom slaughter agreement" means an agreement under
1 23 which in=state=produced swine are slaughtered by a covered
1 24 packer for another person in which the packer does not have a
1 25 controlling interest, and the covered packer does not or will
1 26 not own the pork or pork products produced by the slaughter of
1 27 such in=state=produced swine.
1 28 6. "Department" means the department of agriculture and
1 29 land stewardship.
1 30 7. "Federal Meat Inspection Act" means the same as defined
1 31 in section 189A.2.
1 32 8. "In=state=produced swine" means a porcine animal raised
1 33 in this state for slaughter for at least one month before the
1 34 date of slaughter including on the date of slaughter.
1 35 9. "Nonaffiliated producer" means a producer who sells
2 1 in=state=produced swine to a packer. In addition, all of the
2 2 following must apply:
2 3 a. The producer has less than a one percent equity
2 4 interest in the packer, including but not limited to as a
2 5 shareholder, partner, member, or beneficiary.
2 6 b. If the producer is a business association, the packer
2 7 has less than a one percent equity interest in the producer,
2 8 including but not limited to as a shareholder, partner,
2 9 member, or beneficiary.
2 10 c. The producer is not an officer, director, employee, or
2 11 owner of the producer who is also an officer, director,
2 12 employee, or owner of the packer. If the producer is a
2 13 business association, an officer, director, employee, or owner
2 14 of the producer cannot also be an officer, director, employee,
2 15 or owner of the packer.
2 16 d. The producer does not owe a fiduciary responsibility to
2 17 the packer.
2 18 e. If the producer is a business association, the packer
2 19 does not have an equity interest in the producer.

2 20 10. "Packer" means a business association engaged in
2 21 buying in=state=produced swine in commerce for purposes of
2 22 slaughter, of manufacturing or preparing meats or meat food
2 23 products from in=state=produced swine for sale or shipment in
2 24 commerce, or of marketing meats or meat food products from
2 25 in=state=produced swine in an unmanufactured form acting as a
2 26 wholesale broker, dealer, or distributor in commerce.

2 27 11. "Processing plant" means the geographic location of an
2 28 establishment as defined in section 189A.2 if all of the
2 29 following apply:

2 30 a. It is located in this state.

2 31 b. It is subject to inspection by the department pursuant
2 32 to chapter 189A or the United States department of agriculture
2 33 pursuant to the federal Meat Inspection Act.

2 34 c. It slaughters an average of at least one hundred
2 35 thousand in=state=produced swine per year during the
3 1 immediately preceding five calendar years or has the capacity
3 2 to slaughter that number of in=state=produced swine in any one
3 3 of those years.

3 4 12. "Producer" means a person who holds an ownership
3 5 interest or controlling interest in a business association
3 6 that operates a location in this state where in=state=produced
3 7 swine are fed or otherwise maintained, including a building,
3 8 lot, yard, or corral; or holds an ownership interest or
3 9 controlling interest in in=state=produced swine which are fed
3 10 or otherwise maintained at the location.

3 11 13. "Reasonable competitive bidding opportunity" means
3 12 circumstances in which all of the following apply:

3 13 a. A written or oral agreement does not preclude a
3 14 producer from soliciting or receiving bids from other packers.

3 15 b. No circumstances, customs, or practices exist that do
3 16 any of the following:

3 17 (1) Establish the existence of an implied contract.

3 18 (2) Preclude the producer from soliciting or receiving
3 19 bids from other packers.

3 20 14. "Spot market sale" means a purchase and sale of
3 21 in=state=produced swine by a packer from a producer that
3 22 specifies a firm base price that may be equated with a fixed
3 23 dollar amount on the date the agreement is entered into under
3 24 which the in=state=produced swine are slaughtered not more
3 25 than seven days after the date on which the agreement is
3 26 entered into, under circumstances in which a reasonable
3 27 competitive bidding opportunity exists on the date on which
3 28 the agreement is entered into, and under which the
3 29 in=state=produced swine are located in this state.

3 30 15. "Swine operation" means a location where swine are fed
3 31 or otherwise maintained, including a building, lot, yard, or
3 32 corral; and swine which are fed or otherwise maintained at the
3 33 location.

3 34 Sec. 3. NEW SECTION. 202D.4 SPOT MARKET SALE
3 35 REQUIREMENTS.

4 1 1. For each business day, at least twenty=five percent of
4 2 all in=state=produced swine slaughtered by a covered packer
4 3 must be purchased from nonaffiliated producers by spot market
4 4 sale.

4 5 2. Subsection 1 does not apply to in=state=produced swine
4 6 slaughtered under a custom slaughter agreement.

4 7 Sec. 4. NEW SECTION. 202D.5 CIVIL ACTION.

4 8 If a nonaffiliated producer cannot make a spot market sale
4 9 to a covered packer on a reporting day because a covered
4 10 packer violates section 202D.4, the nonaffiliated producer may
4 11 bring a civil action against the covered packer. The
4 12 nonaffiliated producer may bring the civil action in district
4 13 court for Polk county, the district court of the covered
4 14 packer's principal place of business in this state, or in the
4 15 county where the nonaffiliated producer resides in this state
4 16 or if the nonaffiliated producer is a business association, in
4 17 the county of its principal place of business in this state.
4 18 A covered packer who is guilty of violating section 202D.4
4 19 shall be liable to the nonaffiliated producer for three times
4 20 the amount of the spot market sales price for the swine that
4 21 the nonaffiliated producer would have received if the
4 22 violation had not occurred. The court shall award the
4 23 nonaffiliated producer who prevails in the civil action
4 24 reasonable attorney fees and expert witness fees incurred by
4 25 the nonaffiliated producer, to be paid by the covered packer
4 26 and taxed as part of the costs of the civil action.

4 27 Sec. 5. NEW SECTION. 202D.6 PENALTIES.

4 28 A covered packer who violates a provision of section 202D.4
4 29 is subject to a civil penalty of not more than twenty=five
4 30 thousand dollars. The civil penalties collected under this

4 31 chapter shall be deposited into the general fund of the state.

4 32 Sec. 6. NEW SECTION. 202D.7 ENFORCEMENT ACTION.

4 33 1. a. The attorney general's office is the primary agency
4 34 responsible for enforcing this chapter.

4 35 b. The department shall notify the attorney general's
5 1 office if the department has reason to believe that a
5 2 violation of section 202D.4 has occurred.

5 3 2. The attorney general's office may bring an enforcement
5 4 action in district court in Polk county, in the county where
5 5 the violation occurs, or in the county where the covered
5 6 packer has its principal place of business. The attorney
5 7 general's office may do all of the following:

5 8 a. Apply to the district court for an injunction to do any
5 9 of the following:

5 10 (1) Restrain a covered packer from engaging in conduct or
5 11 practices in violation of this chapter.

5 12 (2) Require a covered packer to comply with a provision of
5 13 this chapter.

5 14 b. Apply to district court for the issuance of a subpoena
5 15 to obtain contracts, documents, or other records of a covered
5 16 packer for purposes of enforcing this chapter.

5 17 c. Bring an action in district court to enforce civil
5 18 penalties as provided in section 202D.6, including the
5 19 imposition, assessment, and collection of the civil penalties.

5 20 EXPLANATION

5 21 This bill regulates packers engaged in the business of
5 22 purchasing in=state=produced swine for slaughter and
5 23 processing. The purpose of the bill is to increase
5 24 competition and transparency among packers that purchase
5 25 in=state=produced swine from producers in this state.

5 26 The bill's provisions are administered by the department of
5 27 agriculture and land stewardship.

5 28 The bill generally defines the term "packer" as a person
5 29 who engages in buying swine for purposes of slaughter, or
5 30 manufacturing or preparing meats or meat food products from
5 31 swine. The bill uses the term "covered packer" to describe a
5 32 packer that is located in this state and slaughters at least
5 33 1,000 in=state=produced swine per business day.

5 34 The bill requires that when a covered packer purchases
6 1 in=state=produced swine, it must reserve a percentage of its
6 2 daily reported kill for the purchase of swine from
6 3 nonaffiliated producers within this state on the spot market.
6 4 The bill exempts swine slaughtered under a custom slaughter
6 5 contract for the requirement. The bill defines a "spot market
6 6 sale" to mean a purchase and sale of swine by a packer from a
6 7 producer that specifies a firm base price on the date the
6 8 agreement is executed, if the swine are slaughtered not more
6 9 than seven days after the date on which the agreement is
6 10 executed. It defines a "nonaffiliated producer" to mean a
6 11 producer who holds no more than a de minimus equity interest
6 12 (shares) in or fiduciary duty to the packer.

6 13 The bill provides enforcement mechanisms. A nonaffiliated
6 14 producer may bring a legal action against a covered packer who
6 15 violates the bill's provisions and may be awarded treble
6 16 damages together with reasonable attorney fees and fees for
6 17 expert witnesses. The bill imposes civil penalties upon a
6 18 covered packer who violates the provisions of the bill.

6 19 The attorney general's office is the primary agency
6 20 responsible for enforcing the bill's provisions. The attorney
6 21 general's office may apply to district court for an injunction
6 22 to restrain a covered packer from engaging in conduct or
6 23 practices in violation of the bill's provisions; require a
6 24 covered packer to comply with a provision of the bill; obtain
6 25 a subpoena to obtain contracts, documents, or other records
6 26 for purposes of enforcing the bill's provisions; or bring an
6 27 action in district court to impose and collect the civil
6 28 penalties. The amount of the civil penalties and the
6 29 authority granted to the office of the attorney general are
6 30 similar to provisions included in Code chapter 202B which
6 31 prohibits the ownership of swine operations by processors and
6 32 restricts contract feeding contracts executed by processors
6 33 and producers.

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